

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DENNIS KELLER and CRYSTAL
KELLER,

Plaintiffs,

v.

CITY OF STOCKTON, et al.,

Defendants.

NO. CIV. S-04-1325 LKK/DAD

O R D E R

Pending before the court is plaintiffs' motion for attorney's fees. Defendants oppose this motion. I decide the matter based on the papers and the pleadings filed herein.¹

I.

BACKGROUND

The court has set forth the relevant facts elsewhere, and no purpose is served by repeating those facts here. Suffice it to say that on July 9, 2004, plaintiffs Dennis Keller and

¹ Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. Local Rule 78-230(h).

1 Crystal Keller filed suit against the City of Stockton ("City"),
2 the County of San Joaquin, Child Protective Services worker Jose
3 Romero, and officers Katherine Henderson and Ken Praegitzer,
4 alleging unreasonable seizure of Crystal from the custody of her
5 father. The suit was predicated on 42 U.S.C. § 1983, and
6 alleged violations of the Fourth and Fourteenth Amendments of
7 the United States Constitution.²

8 After a four-day trial, which ended on March 31, 2006, the
9 jury found that the City, Henderson, and Praegitzer violated the
10 Kellers' civil rights and awarded compensatory damages to Dennis
11 Keller in the amount of \$100,000 and to Crystal Keller in the
12 amount of \$500,000. The jury awarded punitive damages against
13 Henderson and Praegitzer in the amount of \$1,000,000 each, for a
14 total of \$2,600,000.

15 II.

16 STANDARDS

17 The Supreme Court has articulated the standard for a
18 finding of "prevailing party" as whether the party has
19 "succeed[ed] on any significant issue in litigation which
20 achieves some of the benefit the parties sought in bringing
21 suit." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)(citing
22 Nadeau v. Helgemoe, 581 F.2d 275 (1st Cir. 1978)). The Ninth
23 Circuit, in discussing whether a party has achieved "prevailing"
24 status, has noted that a party can achieve that status by
25

26 ² During discovery, plaintiffs dismissed the County of San Joaquin and Jose Romero.

1 establishing a "clear, causal relationship between the
2 litigation brought and the practical outcome realized."
3 Rutherford v. Pitchess, 713 F.2d 1416, 1419 (9th Cir. 1983).

4 In an action brought pursuant to 42 U.S.C. § 1983, "the
5 court, in its discretion, may allow the prevailing party, other
6 than the United States, a reasonable attorney's fee as part of
7 the costs" 42 U.S.C. § 1988(b). Consequently, the
8 court may grant reasonable attorney's fees pursuant to 42 U.S.C.
9 § 1988(b).

10 The federal courts have adopted the "lodestar" method for
11 calculating attorney's fees. Hensley, 461 U.S. at 424. To
12 determine the appropriate fee amount, the court multiplies the
13 number of hours reasonably expended in the litigation by a
14 reasonable hourly rate. Id. The court may then, at its
15 discretion, adjust the lodestar amount after considering other
16 factors that bear on the reasonableness of the fee.³ Dang v.
17 Cross, 422 F.3d 800, 812 (9th Cir. 2005).

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19 _____
20 ³ The twelve Kerr factors, incorporated by Local Rule 54-
293(c), bearing on reasonableness are:

21 (1) the time and labor required, (2) the novelty and
22 difficulty of the questions involved, (3) the skill
23 requisite to perform the legal service properly, (4) the
24 preclusion of other employment by the attorney due to
25 acceptance of the case, (5) the customary fee, (6)
26 whether the fee is fixed or contingent, (7) time
limitations imposed by the client or the circumstances,
(8) the amount involved and the results obtained, (9)
the experience, reputation, and ability of the
attorneys, (10) the "undesirability" of the case, (11)
the nature and length of the professional relationship
with the client, and (12) awards in similar cases.

1 counsel seeks \$350.00 per hour for worked performed on this
2 case. Beauvais Dec. at 1. Defendants contend that plaintiffs'
3 counsel should receive no more than \$300.00 per hour. Defs.'
4 Opp'n at 2. Mr. Beauvais, plaintiffs' counsel, has over twenty-
5 eight years of experience practicing law, having been the
6 counsel of record in numerous § 1983 cases, including five civil
7 rights cases concerning allegedly unlawful removals of children
8 from their parents. Beauvais Dec. at 2. Plaintiffs support the
9 hourly fee request by providing declarations from three
10 attorneys, all of whom are admitted to practice before the
11 Eastern District. The hourly rates that those attorneys suggest
12 vary. See Katz Dec. at 2 (proposing a prevailing rate of more
13 than \$250); Wells Dec. at 2 (suggesting a prevailing rate of at
14 least \$400); Miller Dec. at 4 (proposing a prevailing rate
15 between \$300 and \$325). Andrea Miller's declaration is
16 particularly helpful in that she has served as an expert witness
17 on attorney fee issues in several cases in and around
18 Sacramento. Miller Dec. at 4. Similar to Beauvais, Miller has
19 practiced law for approximately twenty-seven years, and has
20 represented plaintiffs in child removal cases. Based on her
21 experience and opinion, she states that plaintiffs' counsel
22 should be awarded "between \$300 and \$325 per hour." Miller Dec.
23 at 4. Defendants argue that the prevailing rate should be no
24 higher than \$300, by citing to plaintiffs' declarations and
25 arguing that some attorneys received fees of \$300 or less.
26 Defs.' Opp'n Mem. at 2. Defendants' argument is not dispositive

1 of the issue, nor do they submit independent evidence to
2 establish the appropriate prevailing rate.

3 After considering Mr. Beauvais' legal experience, the
4 declarations filed with the court, the manner in which the case
5 was tried, and defendants' opposition, the court concludes that
6 the rate of \$325 adequately reflects the prevailing hourly rate
7 in the Sacramento area for similar work performed by attorneys
8 of comparable skill, experience, and reputation. The court
9 calculates the lodestar figure based on this hourly rate.

10 **C. REASONABLE HOURS BILLED**

11 Plaintiffs seek to recover attorneys' fees for a total of
12 239.6 hours expended in this litigation, including for the time
13 spent on this motion.⁵ Pls.' Mot. at 1. In arriving at the
14 lodestar figure, the district court should exclude hours that
15 are "excessive, redundant, or otherwise unnecessary"
16 Hensley, 461 U.S. at 434. Further, an attorney may request fees
17 associated with his motion for an award of attorneys' fees.
18 Harris v. Marhoeffer, 24 F.3d 16, 19 (9th Cir. 1994).

19 Plaintiffs' counsel argues that although this case did not
20 present any novel issues, having to litigate issues arising from
21 the contentious custody battle that provided context for the

22
23 ⁵ Plaintiffs originally sought to recover 206.3 hours in
24 fees, but on June 5, 2006, plaintiffs submitted a supplemental
25 declaration seeking to recover fees for 33.3 hours spent on
26 researching and writing the opposition brief to defendants' motions
for a new trial, judgment as a matter of law, or remittitur. The
court has examined the declaration and the time records and
determines that the hours sought for opposing these motions are
reasonable.

1 case made litigation much more difficult. Pls.' Mot. at 5.
2 Counsel has filed a lengthy and detailed billing record setting
3 forth the time spent over the last two years on this litigation.
4 See Beauvais Dec., Ex. A. Importantly, defendants do not oppose
5 plaintiffs' calculation of the time and labor expended in the
6 litigation.

7 The court has examined Mr. Beauvais' papers, declarations,
8 and accompanying records and concludes that 239.6 hours is
9 reasonable under the circumstances.

10 **D. BILL OF COSTS**

11 Plaintiffs request \$627.90 for the costs of transcripts
12 related to this suit and \$4,607.21 for other costs. Plaintiffs
13 have tendered to the court invoices evidencing these costs. The
14 court, however, has examined the bill of costs and has adjusted
15 the amount pursuant to Local Rule 54-292 and 28 U.S.C. § 1920.

16 First, plaintiffs have tacked on \$693.70 to the bill of
17 costs for amounts related to travel to Pensacola for the Morie
18 deposition, including dining expenses. This amount should be
19 calculated with the attorneys' fees, not the bill of costs, and
20 the court will add this amount to the attorney's fees. See
21 Davis v. Mason County, 927 F.2d 1473, 1488 (9th Cir. 1991).

22 Second, according to the Local Rules and 28 U.S.C. § 1920,
23 appearance fees, non-appearance fees, per diem costs for the
24 court reporters, and special handling charges may not be taxed.

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1 The court will therefore subtract \$ 533.50 from the requested
2 bill of costs amount.

3 With the adjustments noted above, the court shall award
4 plaintiffs \$ 4,007.91 in costs.


5 **IV.**

6 **CONCLUSION**

7 Accordingly, plaintiffs's counsel is AWARDED \$82,571.61 in
8 attorney's fees and costs.⁶

9 IT IS SO ORDERED.

10 DATED: July 18, 2006.

11 
12 LAWRENCE K. KARLTON
13 SENIOR JUDGE
14 UNITED STATES DISTRICT COURT
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22 ⁶ The amount is based on those fees and costs sufficiently
23 documented by plaintiffs' counsel as follows:

	Hours	Rate	Total
David J. Beauvais	239.6	\$325/hr	\$77,870.00
Travel Costs			\$ 693.70
Costs			\$ 4,007.91
Total			\$82,571.61